

Message from UUP President Fred Kowal

This Q&A is meant to provide the information UUP members need to explore eligibility for unemployment insurance benefits between college terms. Because of the complex legal issues and individually-specific circumstances that may be a factor, we cannot make general assertions about the eligibility of contingent employees on SUNY campuses.

Unemployment Insurance Benefits: Fact Sheet for Contingent Faculty

Am I eligible to receive unemployment insurance benefits between terms?

More than likely, yes. As of January 2017, new federal guidance—Unemployment Insurance Program Letter No. 5-17—addresses the issue of unemployment insurance benefits eligibility between terms.

Contingent faculty who were denied unemployment compensation between terms in the past (or who haven't previously filed for it) may now qualify under the new federal guidance, which is summarized below.

What does the new federal guidance provide?

Generally, federal law and guidelines prohibit contingent faculty from receiving unemployment between academic years or terms, or during breaks within terms, if they have a "contract" for or "reasonable assurance" of a job in the following year, term or remainder of a term.

Eligibility depends on whether you have received an employment offer in the upcoming term and what the elements of that offer are. While determining eligibility remains a case-by-case, fact-specific analysis, the new federal guidance has clarified the definitions of "contract" and "reasonable assurance." These clarifications provide limits as to when unemployment benefits can be denied.



When other rules don't exist, state unemployment agencies rely on federal guidance to determine unemployment eligibility. Under the new federal guidance, states must answer three questions:

1. Is there a "genuine offer" of employment, whether written, oral or implied? Such an offer is made by a person with actual authority to offer employment.
2. Is the employment offered in the following academic year or term, or remainder of the current academic year or term, in the same capacity?
3. Are the economic conditions of the offered employment substantially the same for the upcoming academic year or term (or portion thereof) as the work performed in the first academic year or term (or portion thereof)?

If the answer to any of these questions is "no," the state must grant unemployment compensation between and within academic terms.

If the answer to all questions is "yes," the state must determine if the claimant has a "contract" for or "reasonable assurance" of continued employment in the upcoming academic year or term (or portion thereof).

A contract is an enforceable, noncontingent agreement that provides for compensation for an academic year or annually, though terms describing compensation do not have to be expressed specifically as an annual salary.

over



Unemployment Insurance Benefits: Fact Sheet for Contingent Faculty



Claimants with contracts are ineligible for unemployment. If no contract exists, the state must determine whether there is a “reasonable assurance” of employment in the following academic year or term (or portion thereof). The following factors will be taken into account to determine whether a contingent faculty member has a “reasonable assurance” of employment:

- If any contingencies in the offer are within the employer’s (i.e., the educational institution’s) control, the state agency must conclude the claimant does not have “reasonable assurance” and is entitled to unemployment benefits if otherwise eligible.
 - Course programming decisions, allocation of available funding, and facility availability are considered employer-controllable contingencies.
 - Contingencies outside the employer’s control include course enrollment and seniority.
- The state agency must analyze the totality of circumstances to determine if it is “highly probable” that a job will be available for the claimant in the following academic year or term.
 - To do this, the state will consider a number of factors, including funding, enrollment, the nature of the course, school budgeting and assignment practices, the number of offers made in relation to the number of potential teaching assignments, the student registration period, and other contingencies.
- If the offer contains a contingency, the state agency must give primary weight to the contingent nature of the offer, and determine whether it is highly probable the contingency will be met.

Reasonable assurance cannot be granted without such high probability because the contingent nature of the offer outweighs any other facts indicating that the claimant has a “reasonable assurance.”

How could the changes impact me?

Contingent faculty without a “contract” for or “reasonable assurance” of continued employment for an upcoming academic year or term should consider applying for unemployment between terms.

It is impossible to say precisely which contingent faculty members will now be eligible for unemployment between terms. Unemployment eligibility determinations are inherently fact-specific and can vary on a case-by-case basis.

However, the new federal guidance is an extremely important step forward in clarifying and narrowing the circumstances as to when unemployment compensation can be denied to contingent faculty between terms.

I believe I may be eligible and want more information. Where can I find it?

The new federal guidance, Unemployment Insurance Program Letter No. 5-17, was issued Dec. 22, 2016, by the U.S Department of Labor, Employment and Training Administration. It contains significant additional detail regarding how the new guidance should be applied in particular cases. Program Letter No. 5-17 is posted on UUP’s website at <http://uupinfo.org/academics/pdf/DOL-UIGuidanceLetter.pdf>

It can also be found at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8999

Contact Information:

More information on eligibility for unemployment insurance benefits and how to file a claim to receive benefits in New York can be found at <https://labor.ny.gov/unemploymentassistance.shtm>